IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 584

LOUISE LASSITER,

Appellant,

vs.

NORTHAMPTON COUNTY BOARD OF ELECTIONS,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

APPELLANT'S REPLY BRIEF

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Appellant herein files the Reply Brief in this cause as a response to the Brief of Appellee and to the Brief of the Attorney General of North Carolina Amicus Curiae.

I

The Briefs of the Appellee and of the Attorney General of North Carolina Amicus Curiae Have Totally Failed to Take Issue Upon the Racial and Preferential Grant and Exercise of the Franchise in North Carolina and Have Attempted to Obscure the Fact of This Racial and Preferential Grant and Exercise of the Franchise by Focusing Attention Upon the "Illusion of Equality" of Present Registration Laws.

The Appellee Board of Elections and the Attorney General of North Carolina in his Brief Amicus Curiae have entrenched in the erroneous and untenable positions: (1) that appellant may not complain of the preferential grant of the franchise to "grandfather electors" because of the circumstance that the time for registering as "grandfather electors" has lapsed; (2) that appellant may not complain of the "grandfather clause" in the State Constitution (Article VI, Section 4, Constitution of North Carolina) because of the invalidity of the "grandfather proviso." See ARGUMENT II, Brief of Appellee, pages 11 to 17; ARGUMENT IIB, Brief Amicus Curiae of the Attorney General of North Carolina, pages 18 to 19. The Brief of Appellee gratuitously allows the following:

> "That is, the Supreme Court of North Carolina, in the opinion from which this appeal is taken, has said that for over twenty years, it has recognized the invalidity of the Grandfather Clause, which, of course, carried with it into oblivion the mechanics provided in 1901 for registration to it" (Appellee's Brief, page 11).

While the Attorney General of North Carolina, in reference to the opinion of the State Supreme Court in *Allison* v. *Sharp*, 209 N.C. 477, 184 S.E. 27 (which was cited approv-

ingly in the opinion from which this appeal is taken), assessed the State Supreme Court's position as follows:

> "In other words, the Supreme Court of North Carolina thought that because of the passage of time the effectiveness of this clause had expired and had become quiescent. This is especially true because of the great advance of Negro education in the State of North Carolina, their high rate of attendance in the public schools and the high rate of literacy" (Brief of the State Attorney General, page 19).

But the Supreme Court of North Carolina has spoken for itself. In the opinion below, in clear and lucid language, the State Supreme Court has held that by the convenience of "revival," the people of North Carolina reaffirmed their faith in Article VI of the State Constitution and in all of its provisions and provisos, excepting only the Indivisible Clause which was found in Section 5 of the Article. See Appellant's Brief, pages 23 and 24; Record before this Court, page 31. See also the Brief of Appellee, page 27, where Appellee admits that the State Supreme Court holds that the "Grandfather Clause" was readopted by reference "by the Amendment of 1945," in Appellee's own language, as follows:

> "The Grandfather Clause written into Article VI, Section 4 of the Constitution of North Carolina, in 1902, and readopted by reference by the amendment of 1945, as stated by the Supreme Court of North Carolina in the opinion from which this appeal is taken, was and is void and of no effect."

However, the State Supreme Court has never conceded that the "Grandfather Clause" was void or that its racial discriminatory purpose and reach had any effect upon the

literacy provision from which "grandfather electors" were presumably exempt and to which all members of Appellant's race were always subjected. (Record before this Court, page 31; *Lassiter* v. *Northampton County Board of Elections*, 248 N.C. 102, 102 S.E.2d 853, 3 Race Rel. Law Rep. 495.) The State Supreme Court, in the opinion below, did not overrule, repudiate or discredit its former decision upon the instant questions in *Allison* v. *Sharp, supra.* Instead, the State Supreme Court wholeheartedly embraced its decision in the above mentioned case, saying:

> "In this respect, the statute, then Section 5939 of the Consolidated Statutes, later G.S. 163-28, was the subject of judicial interpretation by this Court, in the case of *Allison* v. *Sharp*, 209 N.C. 477, 183 S.E. 57, decided 26 February, 1936. And the Court, in opinion by Clarkson, J., held it to be constitutional."

Moreover, in *Allison* v. *Sharp, supra*, the North Carolina Supreme Court held:

> "We think the act of the General Assembly is constitutional. .... The act of the General Assembly is no class legislation but applicable to all the citizens of the state. In fact, in the final analysis, plaintiffs do not challenge the constitutionality of Article 6, section 4, but only the statute passed to carry into effect the provisions of that section of the Constitution. It seems that, so far as plaintiffs are concerned, the action is moot or academic."

And it should be observed that the statute involved in *Allison* v. *Sharp, supra*, followed the State Constitutional text in every material detail, including the invidious "grandfather clause." The statute which the State Supreme Court held to be constitutional in *Allison* v. *Sharp, supra*, in 1936

(some twenty years after this Court's decision in *Guinn* v. *United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.ed. 274—1915), read as follows:

> "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language, and shall show to the satisfaction of the registrar his ability to read and write any such section when he applies for registration, and before he is registered: Provided, however, that no male person who was, on January first, one thousand eight hundred and sixty-seven, or at any time prior thereto, entitled to vote under the laws of any state in the United States where he then resided, and no lineal descendant of such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualification aforesaid: Provided, that said elector shall have registered prior to December 1st, 1908, in accordance with article six, section four, of the Constitution and the laws made in pursuance thereto." North Carolina General Statute 163-28, as it read in 1936, at the time of the decision in *Allison* v. *Sharp*, *supra*.

Again, it should be observed that the North Carolina Supreme Court has never held that Article 8, Chapter 163 of the General Statutes of North Carolina, which provide permanent registration for "grandfather electors," is either invalid, unconstitutional, inoperative or even questionable. Compare *Clark* v. *Stateville*, 139 N.C. 490, 52 S.E. 52—1905, where the permanent registration statutes of "grandfather electors" was construed. Finally, the novel argument of Appellee that the legislative rewriting of North Carolina General Statute 163-28 and the repeal of the former North Carolina General Statute 163-28 were a repeal of Article 8, Chapter 163, of the General Statutes of North Carolina,

finds no support in the opinion below. The instant case was before the North Carolina Supreme Court for decision upon Appellant's specific Assignment of Errors that North Carolina General Statute 163-28, and the literacy test therein provided, were unconstitutional and discriminatory as against the 14th and 15th Amendments to the United States' Constitution (R. pp. 14, 15 and 16). However, the definitive rebuttal to Appellee's gratuitous suggestion—which is without documentation—that Section 5 of the legislative Act amending North Carolina General Statute 163-28 (See Appellee's Brief, pages 10, 11 and 32), and which only purported to repeal the prior North Carolina General Statute 163-28, also repealed the laws providing permanent registration for "grandfather electors" (North Carolina General Statute 163-32 et seq.), can be found in the decisions of the North Carolina Supreme Court. See *State* v. *Epps*, 213 N.C. 709, 197 S.E. 580, where a general repealing clause, such as Appellee relies upon in the instant case, is held to be inapplicable to another statute which is not "utterly irreconcilable" to the amended or rewritten statute. In *State* v. *Epps, supra*, the North Carolina Supreme Court explained:

> "In Chap. 49 Public Laws of 1937, it is noted that there is no clause specifically repealing the Turlington Act or any other provisions of the law relating to intoxicating liquor. *Of course, the statute does contain the usual general repealing clause. However, it has been held that such a clause does not operate to repeal an existing act unless the two acts are utterly irreconcilable. Repeals of statutes by implication are not favored, and, to work a repeal, the implication must be necessary. . . . . The common formula implies very strongly that other acts on the same subject are not repealed.*" (Emphasis added.)

See also, *Spaugh* v. *City of Charlotte*, 239 N.C. 149, 79 S.E. 2d 748; *McLean* v. *Durham County Board of Elections*, 222 N.C. 6, 21 S.E.2d 842.

Thus, it is seen that there is no substance to Appellee's position that Article 8, Chapter 163 of the North Carolina General Statutes have been repealed. Nor is there substance in Appellee's suggestion that this Court is barred from a view of these infectious enactments when ruling upon appellant's claim that the North Carolina "literacy test," as found in North Carolina General Statute 163-28 is rendered discriminatory and unconstitutional by virtue of infection from the permanent registration statutes. See *People of Illinois ex rel. McCollum* v. *Board of Education of School District No. 71, Champaign, Illinois*, 333 U.S. 203, 68 S.Ct. 461, 92 L.ed. 648, 2 A.L.R. 2d 1338; *St. Louis Southwestern Ry. Co.* v. *State of Arkansas*, 217 U.S. 136, 30 S.Ct. 476, 54 L.ed. 698; *Terminello* v. *Chicago*, 337 U.S. 1, 69 S.Ct. 894, 93 L.ed. 1131. And, the proposition that Appellant may only assert equality in the registration process, as distinguished from the final exercise of the franchise, is totally contrary to the decisions of this Court. See *Adams* v. *Terry*, 345 U.S. 461, 73 S.Ct. 809, 97 L.ed. 1152; *Smith* v. *Allwright*, 321 U.S. 649, 64 S.Ct. 757, 88 L.ed. 987. This is particularly true in view of the North Carolina statutory and constitutional provisions which make registration an indispensable prerequisite for voting, Article VI, Section 3, Constitution of North Carolina and North Carolina General Statute 163-27. See also *Pace* v. *Raleigh*, 140 N.C. 65, 52 S.E. 277.

II

The Briefs of the Appellee and of the Attorney General of North Carolina Amicus Curiae Have Erroneously Assumed That the People of North Carolina Had the Power in 1945 to Revive Section 4 of Article VI of the State Constitution in the Face of the 14th and 15th Amendments.

Although it is apparent from Appellee's Brief that had Appellee written the opinion below, it would have been pitched upon some basis other than the 1945 "revival" of Article VI of the State Constitution, the fact remains that the validity of the North Carolina "literacy test" was made by the State Supreme Court to hang upon the presumed revival in 1945 of Article VI of the State Constitution (R. pp. 30-33). Both the Appellee and the Attorney General of North Carolina have labored hard in a beguiling attempt to convince this Court that the only effect of the 14th and 15th Amendments to the Federal Constitution upon the North Carolina registration laws and their educational tests and racial exemptions therefrom, was the unenforceable, illusory, and effete shearing of the "grandfather clauses" from the state statutory and constitutional provisions. It appears, without doubt, that Appellee and the Attorney General of North Carolina have adopted the unfounded belief that Appellant's attack is upon the "grandfather clauses" themselves *rather than upon the educational tests provided by North Carolina General Statute 163-28 et seq. which are made racially discriminatory and infectious by virtue of the "grandfather clauses."* At the risk of sounding trite and redundant, Appellant reiterates her position: that she complains of discriminatory educational tests in ARGUMENT I of her Brief in this Court, as she complained in all of the Courts and forums below, which are rendered racially discriminatory because of grandfather clause. See

McFarland v. *American Sugar Refining Co.*, 241 U.S. 79, 36 S.Ct. 498, 60 L.ed. 899; *Harrison* v. *St. Louis and S. F. R. Co.*, 232 U.S. 318, 34 S.Ct. 333, 58 L.ed. 621; *Morey* v. *Doud*, 354 U.S. 457, 77 S.Ct. 1344, 1 L.ed. 1485. See also *Lane* v. *Wilson*, 307 U.S. 268, 59 S.Ct. 872, 83 L.ed. 1281; *Louise Lassiter* v. *Helen H. Taylor*, 152 F.Supp. 295, 2 Race Rel. Law Rep. 832; *General Motors Corp.* v. *Blevin*, 144 F.Supp. 381. In all of the above cited cases, the rule is indicated that where a statute is held to be discriminatory, the question of its severability from its more invidious base does not and cannot arise.

A reading of the opinion of the North Carolina Court indicates that the Court was of the erroneous impression that doctrine of severability of statutes would condemn only the "grandfather clauses" in the North Carolina laws and leave the adjunct educational provision intact. It is observed that this impression may have been gathered from an over-literal reading of this Court's opinion in the *Guinn* case, *supra*. This Court's opinion in the *Guinn* case indicates that after ruling upon "grandfather clause" therein contained under the 15th Amendment to the Federal Constitution, this Court proceeded to rule separately upon the educational test therein involved as though the education test *might* have had an independent constitutional status, uninfluenced by the annexed "grandfather clause," and that the survival of the educational test, after the demise of the "grandfather clause," was a question of state law. It is observed, however, that the *Guinn* case, *supra* involved a federal prosecution against an election official rather than the rights of a complaining applicant for the franchise, against whom a discriminatory educational test had been applied. It is next observed that in the *Guinn* case this Court might have decided the case upon the more plausible theory that the educational test itself was discriminatory and, hence, the educational qualifications for

voters were invalid by reason of federal law. See *McFarland* v. *American Sugar Refining Co., supra; Harrison* v. *St. Louis & S. F. R. Co., supra.* See also *Shelley* v. *Kraemer,* 334 U.S. 1, 68 S.Ct. 836, 92 L.ed. 1161, 3 A.L.R. 2d 441; *Pennsylvania* v. *Board of Directors of City Trust,* 353 U.S. 230, 77 S.Ct. 806, 1 L.ed. 2d 792. It is respectfully submitted that the result reached in the *Guinn* case is eminently sound, though its rationale has never been employed in racial, discriminatory actions. See *Oyama* v. *State of California,* 332 U.S. 633, 68 S.Ct. 269.

III

The Briefs of the Appellee and the Attorney General of North Carolina Have Erroneously Assumed That the Doctrine of Revival, as Applied by the Court Below, Provides an Adequate Answer to Appellant's Contention That the North Carolina General Statute 163-28, and the Educational Test Therein Presumably Provided Are Violative of the 15th Amendment to the Federal Constitution.

No time need be wasted in stating the proposition that the people of North Carolina could not by an indirection, such as employment of the doctrine of revival, re-enacted the void registration laws in the manner and form as held by the State Supreme Court. See *Lassiter* v. *Taylor, supra; Lane* v. *Wilson, supra.* As a matter of common sense, as distinguished from federal constitutional principles, the invalidity of a statutory or constitutional enactment cannot be abrogated merely by successive re-enactments. See 82 C.J.S. (Statutes) Section 70(b). Again, Article VI, Section four of the North Carolina Constitution was as offensive, from a racial point of view, in 1945, as it was in 1902 or as it was when before the federal court in 1957. See *Lassiter* v. *Taylor, supra.* In view of the State Supreme Court's prior ruling in *Allison* v. *Sharp, supra,* and

in face of the 1957 Three Judge District Court's ruling in *Lassiter* v. *Taylor, supra*, it can be easily demonstrated that resort to the doctrine of a revival is nothing less than a mere cloak to conceal a well-founded federal question. Compare *Postal Telegraph Cable Co.* v. *Newport, Ky.*, 247 U.S. 464, 38 S.Ct. 566, 62 L.ed. 1215; *Ward* v. *Board of County Com'rs*, 253 U.S. 17, 40 S.Ct. 419, 64 L.ed. 751.

Conclusion

Concluding this Reply Brief, Appellant re-affirms all of the arguments made and suggested in her prior Brief and in the Record in this cause and respectfully submits that there is no merit in the arguments contained in the Briefs of Appellee or of the Attorney General of North Carolina. Appellant also contends that she is entitled to the relief for which she has prayed on this appeal.

Respectfully submitted,

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